

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CISCO SYSTEMS, INC.,)
)
Plaintiff,)
)
v.) C.A. No. 10-687 (GMS)
)
MOSAID TECHNOLOGIES INC.,) PUBLIC VERSION
PHILLIP SHAER and JOHN LINDGREN,) September 6, 2013
)
Defendants.)

**MOSAID'S MOTION TO DISMISS COUNTS 21-23
OF CISCO'S SECOND SUPPLEMENTAL AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant MOSAID Technologies, Inc. (“MOSAID”) respectfully moves the Court to dismiss Counts 21 (“Violations of the Racketeer Influenced and Corrupt Organizations Act (RICO”)), 22 (“California Business and Professions Code Section 17200”) and 23 (“Declaratory Judgment That Unclean Hands Bars Enforcement of the Patents-in-Suit against Cisco and Cisco’s Products”) of Plaintiff Cisco Systems, Inc.’s Second Supplemental Amended Complaint (“SSAC”) (D.I. 102). Each of these Counts should be dismissed for failure to state a claim upon which relief can be granted.

In support of the motion, MOSAID hereby incorporates by reference pages 10-19 of Defendants Phillip Shaer’s and John Lindgren’s Opening Brief in Support of Their Motion to Dismiss Plaintiff Cisco’s Second Supplemental and Amended Complaint (“Individual Defendants’ Brief”), filed on the same date as this Motion, relating to Counts 21 and 22.

With respect to Count 23 (“Unclean Hands”), Cisco relies on the same substantive allegations underlying its RICO claim to assert that MOSAID has “unclean hands.” (SSAC,

¶ 319-328). However, these allegations provide no more support for an “unclean hands” defense than they do for a RICO claim.

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[REDACTED] As a matter of law, the alleged failure to undertake an affirmative act [REDACTED] cannot constitute a crime (or any other form of “misconduct”), [REDACTED]

Finally, as part of its “unclean hands” claim, Cisco also alleges that [REDACTED] [REDACTED] (SSAC, ¶¶ 322-328). However, “[s]poliation refers to the destruction or material alteration of evidence or to the failure to preserve property for another’s use as evidence in pending or reasonably foreseeable litigation.” *Micron*

Technology, Inc. v. Rambus, Inc., 645 F.3d 1311, 1320 (Fed. Cir. 2011) (*quoting Silvestri v. General Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001)). In this case, Cisco alleges no facts showing that [REDACTED]

[REDACTED] As a result, Cisco's allegations cannot establish spoliation as a matter of law.

For these reasons (and for the reasons set forth in the Individual Defendants' Brief), MOSAID respectfully requests that Counts 21-23 of Cisco's Second Supplemental Amended Complaint be dismissed.

POTTER ANDERSON & CORROON LLP
OF COUNSEL

Brian A. Rosenthal
MAYER BROWN LLP
1999 K Street, NW
Washington, DC 20006-1101

James R. Ferguson
Steven Yovits
MAYER BROWN LLP
71 South Wacker Drive
Chicago, IL 60606-4637

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By: /s/ Philip A. Rovner
Philip A. Rovner (#3215)
Jonathan A. Choa (#5319)
Hercules Plaza
P.O. Box 951
Wilmington, DE 19899
(302) 984-6000
provner@potteranderson.com
jchoa@potteranderson.com

*Attorneys for Defendant
MOSAID Technologies Inc.*

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CERTIFICATE OF SERVICE

I, Philip A. Rovner, hereby certify that, on September 6, 2013, the within document was electronically filed with the Clerk of the Court using CM-ECF which will send notification to the registered attorneys of record that the document has been filed and is available for viewing and downloading.

/s/ Philip A. Rovner _____

Philip A. Rovner (#3215)
Potter Anderson & Corroon LLP
Hercules Plaza
P. O. Box 951
Wilmington, DE 19899
(302) 984-6000
rovner@potteranderson.com